

**WHITE AND WILLIAMS LLP**

BY: Michael O. Kassak, Esquire (MK-9317)  
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457 Haddonfield Road, Suite 400  
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856-317-3600  
ATTORNEY FOR Defendants

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

BOBBIE LYNN PIERCE, Individually and as Administratrix of the Estate of Joseph Pierce	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	NO. 09-6487
	:	
CHERRY HILL TOWNSHIP, CHERRY HILL TOWNSHIP POLICE DEPARTMENT, SGT.	:	
WEBER, SGT. HENDERSON, P/O TRIVERI, P/O DELCAMPO, P/O SHIELDS, P/O CUMMINGS,	:	
P/O OSTERMUELLER, P/O KELLY, P/O CHARNEY, P/O BUEHLER, P/O COLL, P/O	:	
KEMPF, P/O M. JOHNSON, P/O HOULIHAN, DETECTIVE KAPPLER, DETECTIVE KELLY,	:	
LT. SAPORITO, LT. KUSHINA, JOHN DOES (1- 10) (Fictitious Names), JOHN C. DOES (1-10)	:	
(Fictitious Names), and JOHN D. DOES (1-10)	:	
(Fictitious Names)	:	
	:	
Defendant.	:	

**DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT WITH AFFIRMATIVE  
DEFENSES, ENTRY OF APPEARANCE, AND DEMAND FOR JURY TRIAL**

Defendants Cherry Hill Township, Cherry Hill Township Police Department, Sergeant Weber, Sergeant Henderson, Police Officer Triveri, Police Officer DelCampo, Police Officer Shields, Police Officer Cummings, Police Officer Ostermueller, Police Officer Kelly, Police Officer Charney, Police Officer Buehler, Police Officer Coll, Police Officer Kempf, Police Officer M. Johnson, Police Officer Houlihan, Detective Kappler, Detective Kelly, Lieutenant

Saporito, and Lieutenant Kushina (“answering defendants”), by and through their attorneys White and Williams LLP, hereby answer plaintiff’s Complaint as follows:

1. After reasonable investigation, answering defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and same are therefore deemed denied.

2. Denied.

3. Admitted in part, denied in part. It is admitted that plaintiff has made such allegation. The remaining allegations of this paragraph are specifically denied.

4. Denied.

5. Admitted.

6. After reasonable investigation, answering defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and same are therefore deemed denied.

6. After reasonable investigation, answering defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and same are therefore deemed denied.

7. Admitted in part, denied in part. It is admitted that plaintiff brings this action. The remaining allegations of this paragraph are specifically denied.

8. After reasonable investigation, answering defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and same are therefore deemed denied.

9. Admitted.

10. Denied.

11. Admitted.

12. After reasonable investigation, answering defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and same are therefore deemed denied. By way of further answer, any allegations that answering defendants acted improperly are denied.

13. After reasonable investigation, answering defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and same are therefore deemed denied. By way of further answer, any allegations that answering defendants acted improperly are denied.

14. After reasonable investigation, answering defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and same are therefore deemed denied. By way of further answer, any allegations that answering defendants acted improperly are denied.

15. Admitted in part, denied in part. It is admitted only that answering defendants were acting in the course and scope of their employment at the time of the incident referred to in plaintiff's Complaint. The remaining allegations of this paragraph are denied.

16. Admitted in part, denied in part. It is admitted only that answering defendants were acting in the course and scope of their employment at the time of the incident referred to in plaintiff's Complaint. The remaining allegations of this paragraph are denied.

17. After reasonable investigation, answering defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and same are therefore deemed denied.

18. Denied.

19. Denied.

20. Denied as stated. Answering defendants believe that the plaintiff arrived at the hospital at 3:55 a.m.

21. Denied.

22. Denied.

23. Denied.

24. Denied.

25. Denied.

26. Denied.

27. Denied.

28. Denied.

29. Denied.

30. Denied.

31. Denied.

32. Denied.

33. Denied.

34. Denied.

35. Admitted.

**COUNT I**

36. Answering defendant repeat and incorporate each and every paragraph contained in the within Answer as though same were fully set forth at length herein.

37. Denied.

38. Denied.

39. Denied.

40. a. – j. Denied.

41. Denied.

42. Denied.

43. Denied.

44. Denied.

45. Denied.

46. Denied.

47. Denied.

48. This paragraph states conclusions of law to which no responsive pleading is required under the Federal Rules of Civil Procedure.

WHEREFORE, answering defendants demand judgment in their favor together with interest, attorney's fees, and costs of suit.

**COUNT II**

49. Answering defendants repeat and incorporate each and every paragraph contained in the within Answer as though same were fully set forth at length herein.

50. Denied.

51. Denied.

52. Denied.

WHEREFORE, answering defendants demand judgment in their favor together with interest, attorney's fees, and costs of suit.

**COUNT III**

53. Answering defendants repeat and incorporate each and every paragraph contained in the within Answer as though same were fully set forth at length herein.

54. Admitted.

55. a.-f. Denied.

56. Denied.

57. Denied.

58. Denied.

59. Denied.

WHEREFORE, answering defendants demand judgment in their favor together with interest, attorney's fees, and costs of suit.

**COUNT IV**

60. Answering defendants repeat and incorporate each and every paragraph contained in the within Answer as though same were fully set forth at length herein.

61. Denied.

62. Denied.

WHEREFORE, answering defendants demand judgment in their favor together with interest, attorney's fees, and costs of suit.

**COUNT V**

63. Answering defendants repeat and incorporate each and every paragraph contained in the within Answer as though same were fully set forth at length herein.

64. Denied.

65. Denied.

66. Denied.

67. Denied.

WHEREFORE, answering defendants demand judgment in their favor together with interest, attorney's fees, and costs of suit.

**COUNT VI**

68. Answering defendants repeat and incorporate each and every paragraph contained in the within Answer as though same were fully set forth at length herein.

69. Denied.

70. Denied.

WHEREFORE, answering defendants demand judgment in their favor together with interest, attorney's fees, and costs of suit.

**AFFIRMATIVE DEFENSES**

**FIRST**

Plaintiff's claims are barred by the applicable statute of limitations.

**SECOND**

Answering defendants performed each and every duty which they owed to the plaintiff.

**THIRD**

Answering defendants violated no duty or obligation which they owed to the plaintiff.

**FOURTH**

The injuries and damages, if any, sustained by the plaintiff were caused solely and proximately by her own negligence at the time and place mentioned in the Complaint.

**FIFTH**

Plaintiff is barred from recovery by reason of her own contributory negligence at the time and place mentioned in the Complaint.

**SIXTH**

The injuries and damages, if any, suffered by the plaintiff were caused solely and totally as a result of actions by a third person over whom answering defendants had no control nor right to control.

**SEVENTH**

If plaintiff sustained the injuries and damages alleged in the Complaint, then any recovery should be eliminated or reduced in accordance with N.J.S.A. 2A:15-5.1 through 2A:15-5.3.

**EIGHTH**

The claims of the plaintiff are barred and/or limited by the New Jersey Tort Claims Act, N.J.S.A. 59:2-1 et seq.

**NINTH**

The claims of plaintiff are barred for failure to provide notice of a claim in accordance with N.J.S.A. 59:8-2.

**TENTH**

Plaintiff is barred from recovery because the decedent assumed the risk of injury.

**ELEVENTH**

Plaintiff's Complaint fails to state a cause of action upon which relief can be granted. Answering defendants respectfully reserve the right to move to dismiss the Complaint.

**TWELFTH**

Answering defendants are entitled to qualified immunity.

**THIRTEENTH**

All of answering defendants' actions were done in good faith.

**FOURTEENTH**

No punitive damages can be awarded against answering defendants.

**FIFTEENTH**

Plaintiff's claim is barred by the doctrines of res judicata and collateral estoppel.

**SIXTEENTH**

Plaintiff's claims are barred by the doctrine of issue preclusion.

**SEVENTEENTH**

Plaintiff's claims are barred by the favorable-termination rule.

**EIGHTEENTH**

Answering defendants' actions were justified by probable cause.

**NINETEENTH**

Plaintiff's claims are based on an impermissible theory of *respondeat superior*.

**ENTRY OF APPEARANCE**

Kindly enter my appearance on behalf of defendants, Cherry Hill Township, Cherry Hill Township Police Department, Sergeant Weber, Sergeant Henderson, Police Officer Triveri, Police Officer DelCampo, Police Officer Shields, Police Officer Cummings, Police Officer Ostermueller, Police Officer Kelly, Police Officer Charney, Police Officer Buehler, Police Officer Coll, Police Officer Kempf, Police Officer M. Johnson, Police Officer Houlihan, Detective Kappler, Detective Kelly, Lieutenant Saporito, and Lieutenant Kushina, in the above-captioned matter.

**DEMAND FOR JURY TRIAL**

Answering defendants hereby demand a trial by jury as to all material issues of fact. Said jury is to consist of 12 jurors.

**WHITE AND WILLIAMS LLP**  
Attorneys for Defendants

BY \_\_\_\_\_  
MICHAEL O. KASSAK, ESQ.

Dated: January 26, 2010

**WHITE AND WILLIAMS LLP**

BY: Michael O. Kassak, Esquire (MK-9317)  
LibertyView  
457 Haddonfield Road, Suite 400  
Cherry Hill, NJ 08002  
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WEBER, SGT. HENDERSON, P/O TRIVERI, P/O DELCAMPO, P/O SHIELDS, P/O CUMMINGS,	:	
P/O OSTERMUELLER, P/O KELLY, P/O CHARNEY, P/O BUEHLER, P/O COLL, P/O	:	
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(Fictitious Names)	:	
	:	
Defendant.	:	

**CERTIFICATE OF SERVICE**

Michael O. Kassak, Esquire, hereby certifies that a true and correct copies of the attached Answer of Defendants to Plaintiff's Complaint With Affirmative Defenses, Entry of Appearance, and Jury Trial Demand was served upon counsel listed below by electronic filing on January 26, 2010.

Anthony L. Marchetti, Jr., Esquire  
CURETON CLARK, P.C.  
3000 Midlantic Drive, Suite 200  
Mt. Laurel, NJ 08054

DATED: January 26, 2010



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MICHAEL O. KASSAK, ESQUIRE